

**Draft**

**4/13/2007**

**SETTLEMENT AGREEMENT  
FOR NATURAL RESOURCE DAMAGES  
ASSOCIATED WITH THE PALMER BARGE LINE SITE**

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**SETTLEMENT AGREEMENT FOR NATURAL RESOURCE DAMAGES**  
**ASSOCIATED WITH THE PALMER BARGE LINE SITE**

This Settlement Agreement ("Agreement") is by and between the Texas Commission on Environmental Quality ("TCEQ"), the Texas Parks and Wildlife Department ("TPWD"), Texas General Land Office ("GLO"), the National Oceanic and Atmospheric Administration ("NOAA") of the United States Department of Commerce, and the United States Department of the Interior represented by the United States Fish and Wildlife Service ("USFWS"), (collectively, "the Trustees"); and E.I. du Pont de Nemours and Company, Texaco Inc., Ashland Inc. and Kirby Inland Marine, L.P. (collectively, "the Settling Parties").

This Agreement provides the terms upon which the Trustees and the Settling Parties agree to settle the claims of the Trustees for natural resource damages which resulted from releases of hazardous substances at or from the Palmer Barge Line site ("the Site"). This Agreement was negotiated and signed by the Parties in good faith to avoid expensive and protracted litigation, and is a fair and equitable settlement of claims that could otherwise be contested.

**I. DEFINITIONS**

Whenever terms listed below are used in this Agreement or in any exhibit attached hereto and incorporated hereunder, the following definitions shall apply:

A. "Agreement" shall mean this document entitled "Settlement Agreement for Natural Resource Damages Associated with the Palmer Barge Line Site," all attachments hereto, and all items approved by the Trustees pursuant to Section V (Obligations of Settling Parties).

B. "Damage Assessment and Restoration Plan" or "DARP" shall mean the plan that was issued on February 2007 and is attached to this Agreement as Exhibit A and incorporated herein by reference.

C. "Effective Date" shall mean the date of the last Party's signature to this document.

D. "Federal Trustees" shall mean NOAA and USFWS.

E. "Force Majeure" shall mean any event arising from causes beyond the control of the Settling Parties, of any entity controlled by the Settling Parties, or of the Settling Parties' contractors, that delays or prevents the performance of any obligation under this Agreement despite the Settling Parties' best efforts to fulfill the obligations of this Agreement, except the obligations to make payments as described in this Agreement. The requirement that the Settling Parties exercise "best efforts to fulfill the obligations" includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is

minimized to the greatest extent possible. The term does not include financial inability to complete a Restoration Project.

F. "Implementation and Monitoring Plan" or "IM Plan" shall mean the plan that is dated February 9, 2007 and is attached to this Agreement as Exhibit B and incorporated herein by reference.

G. "Lead Administrative Trustee" or "LAT" shall mean the trustee agency with lead responsibility for coordination of all Trustee activities associated with the Site. The LAT for this Site is TPWD.

H. "Parties" shall mean the Trustees and the Settling Parties.

I. "Party" shall mean any one of the Parties to this Agreement.

J. "Restoration Project" shall mean the preferred alternative defined and described in the Damage Assessment and Restoration Plan (Exhibit A) and the Implementation and Monitoring Plan (Exhibit B).

K. "Settling Parties" shall mean E.I. du Pont de Nemours and Company, a Delaware corporation; Texaco Inc., a Delaware corporation; Ashland Inc., a Kentucky corporation; and Kirby. "Kirby" collectively refers to all the following affiliated companies and predecessor companies: Kirby Corporation; Kirby Inland Marine, LP (as successor to Dixie Carriers, Inc., Western Towing Company, Kirby Inland Marine, Inc., Hollywood Marine, Inc., Kirby Inland Marine of Louisiana, Inc., Kirby Inland Marine of Texas, Inc., and Kirby Inland Marine of Mississippi, Inc.); Dixie Offshore Transportation Company; Kirby Inland Marine of Louisiana, Inc. (as successor to Scott Chotin, Inc., Chotin Carriers, Inc., TPT Transportation, Inc.); Kirby Inland Marine of Texas, Inc. (as successor to Dixie Marine, Inc.); Kirby Inland Marine of Mississippi, Inc. (as successor to Brent Transportation Company and OMR Transportation Company); Sabine Transportation Corporation; and Kirby Tankships, Inc..

L. "Site" shall mean the Palmer Barge Line facility located at 8700 Ferry Road in Port Arthur, Jefferson County, Texas. In addition, Site shall mean any areas outside the facility where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the facility.

M. "State Trustees" shall mean TCEQ, TPWD, and GLO.

N. "Trustees" shall mean TCEQ, TPWD, GLO, NOAA, and USFWS.

## **II. TRUSTEE AUTHORITY**

The Trustees enter into this Agreement pursuant to their designation as trustees by the President

of the United States or the Governor of Texas under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*; the Federal Water Pollution Control Act (“FWPCA”), 33 U. S. C. § 1251, *et seq.*; and any other applicable Federal and State of Texas laws, rules and regulations. The Trustees act on behalf of the public to recover for injuries to natural resources and the lost services those resources would have provided.

### **III. APPLICABILITY OF AGREEMENT**

A. The provisions of this Agreement shall be binding on and inure to the benefit of the Trustees and their successors and assigns and be binding on and inure to the benefit of the Settling Parties and their successors, and assigns. Any change in ownership or corporate status of the Settling Parties, including any transfer of assets or real or personal property, shall in no way alter their rights or obligations under this Agreement.

B. This Agreement is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation. The Trustees do not, by their consent to this Agreement, warrant or aver in any manner that Settling Parties’ compliance with this Agreement will constitute or result in compliance with the requirements of any Federal, State, and local laws, rules, and regulations that may be applicable to the implementation of any Restoration Project or other activities required by the terms of this Agreement.

C. Notwithstanding any action by the Trustees, including their issuance of the DARP or the review and approval of any design, plan, report, and other information or action formulated by the Settling Parties under this Agreement, the Settling Parties are and shall remain solely responsible for compliance with all terms and requirements of this Agreement.

D. The obligations of the Settling Parties to implement the requirements of this Agreement are joint and several. In the event of insolvency or other failure of any one or more of the Settling Parties to implement the requirements of this Agreement, the remaining Settling Parties shall complete all such requirements.

E. This Agreement is a settlement of a contested matter, and neither payment nor the acceptance of any consideration represents an admission of liability or responsibility by any Party.

### **IV. BACKGROUND**

A. The Site consists of approximately 17 acres located 4.5 miles northeast of the city of Port Arthur in Jefferson County along Ferry (or Old Yacht Club) Road on Pleasure Islet. The Islet, completed in 1916, was formed by deposition of dredge material generated by the creation of the Sabine-Neches Ship Channel. Pleasure Islet is located approximately one-half mile southwest of the confluence of the Neches River and the Sabine-Neches Ship Channel. The site is located on the eastern edge of the Islet, and is bordered by the State Marine Superfund (SMS) site to the

south, Sabine Lake to the east, Old Yacht Club Road to the West, and SMS vacant property to the north. The Site has a dock on Sabine Lake, a one hundred square mile estuary that opens into the Gulf of Mexico.

Sabine Lake supports an active commercial and recreational fishery, and adjoins several regional refuges/preserves that protect sensitive habitat including the Sabine National Wildlife Refuge, Sydney Island and Dooks Island bird rookeries. In addition, Sabine Lake provides habitat for both federally and state listed threatened and/or endangered species such as the bald eagle, black rail, and Texas diamondback terrapin.

B. The city of Port Arthur operated a municipal landfill on Pleasure Islet from 1956 through the mid 1980s. In April 1982, John Palmer purchased 17 acres from the city of Port Arthur for the purpose of operating a barge and marine vessel maintenance business on the Islet. The business included cleaning, degassing, maintenance and inspection of barges and other marine equipment. Typical cleaning operations included the removal of sludge, liquid (heals), and all other residual material from barges by pressure steaming the vessel holds. In 1997, operations at the property were terminated as Wrangler Capital purchased Palmer Barge Line, Inc. from receivership. The current site owner is Chester Slay, who has resumed business on the Site by salvaging metal scrap and establishing a new boat maintenance facility.

C. In 1996 the TCEQ (then known as the Texas Natural Resource Conservation Commission, or TNRCC) conducted a multi-media inspection of the Site to determine the status of the facility's compliance with the Federal Clean Air Act. The investigation revealed the presence of several chemical compounds that TCEQ had not been notified of or permitted. Other violations were also discovered, including the construction of tanks and other equipment without approval. Large areas of contamination were identified on Site soil. These findings triggered further investigation by both the U.S. Environmental Protection Agency (EPA) and TCEQ.

In 1996, EPA and TCEQ contracted an expanded site inspection (ESI) to Weston for the purpose of evaluating the nature and extent of on-site and off-site contamination as well as evaluating the environmental fate of the contaminants. Analytical data from this evaluation indicated the presence of both organic and inorganic contaminants in soil samples collected from locations surrounding the numerous aboveground storage tanks at the site. Hazardous materials were found in the shallow near-shore sediments of Sabine Lake. Semi volatile contaminants of concern include acenaphthylene, anthracene, benzo(a)pyrene, chrysene and fluoranthene. There were also numerous pesticides and PCB (poly-chlorinated bi-phenyl, ex. Aroclor 1254) detected in the onsite soil samples. Elevated levels of inorganic contaminants included chromium, copper, lead, and zinc.

In April 2000, EPA completed a hazard ranking system (HRS) analysis of the Palmer Barge Line Site. The purpose of an HRS is to evaluate risk to human health and the environment due to exposure to Site contamination. The Site was placed on the Superfund list based upon its HRS

US EPA authorized an emergency removal action for reduction of on-site contamination in August 2000. Removal activities included removal of wastes, wastewater treatment, and sludge stabilization.

An Administrative Order on Consent was signed by the EPA and the Settling Parties in 2002. This agreement outlined the assessment to be conducted at the Site, and set a timeline for remedial work to be performed to address potential contamination of the Site.

D. In 2003 and 2004, the Settling Parties worked with the Trustees to perform a cooperative, restoration-based natural resource damage assessment to address any natural resource injuries at the Site. As a result of this assessment, the Trustees determined that hazardous substances (including semi-volatile organic compounds, poly-cyclic aromatic hydrocarbons [PAHs], PCBs, pesticides, and metals) were available in the sediments and injury to ecological habitat of approximately 7.55 acres had occurred.

E. The methodologies used by the Trustees to assess injuries to the natural resources were specific to the Site and provide appropriate, valid, and reliable estimates of injuries resulting from releases at or from the Site. In compliance with CERCLA, the Trustees have ensured that no double counting of natural resource damages has resulted from either the methodologies used to determine injury or the methodology used to determine the required compensation for those injuries.

F. The Trustees developed a Damage Assessment and Restoration Plan that details the assessment methodology and restoration alternatives reviewed at the Site. The DARP evaluates restoration alternatives appropriate for addressing benthic resource losses and benthic service losses associated with the Site. The preferred alternative for compensating the public for the benthic injuries that occurred at the Site is marsh creation. The Parties agree that the creation of 1.7 acres of vegetated salt marsh will adequately compensate the public for natural resource service losses associated with the release of hazardous materials at the site.

## **V. OBLIGATIONS OF SETTLING PARTIES**

### **A. Compensation for Natural Resources**

1. The Settling Parties shall complete the Restoration Project in accordance with the DARP and the Implementation and Monitoring Plan. The Restoration Project is generally described as the creation of 1.7 acres of vegetated marsh complex (including planting and performance monitoring) in the Lower Neches Wildlife Management Area, which is in Orange County and owned and managed by TPWD.

2. All permits, right-of-ways, access agreements, and other documents necessary to implement the Restoration Project shall be obtained by the Settling Parties at their expense

and the Settling Parties shall comply with all applicable Federal, State, and local laws in implementing the Restoration Project.

3. The Settling Parties may enter into any agreement necessary to fulfill their obligations under this Agreement. The Trustees shall not be held out as a party to any contract entered into by or on behalf of the Settling Parties in carrying out activities pursuant to this Agreement. Neither the Settling Parties nor any such contractor shall be considered an agent of the Trustees.

**B. Compensation for Trustee Costs**

1. The Trustees have expended time, funds, and resources in assessing damages for the natural resource injuries that resulted from releases of hazardous substances at or from the Site and in arriving at a settlement with the Settling Parties. Additionally, the Trustees may expend time, funds, and resources in the future to implement this Agreement. The Trustees acknowledge that the Settling Parties have paid the costs they have incurred, or expect to incur, in assessing natural resource damages at the Site and participating, as necessary, in the implementation of the Restoration Project and Implementation and Monitoring Plan.

2. In the event that the Trustees incur additional costs from July 01, 2006 through the Effective Date of this Agreement, the Settling Parties shall reimburse each Trustee for its actual additional costs within sixty days after receipt of a demand letter that includes supporting information documenting the Trustees' costs. In no case shall the Trustees demand reimbursement for any such costs incurred after the Effective Date of this Agreement. The Settling Parties shall send the reimbursement to each Trustee in the manner and to the location indicated in any demand letter.

**VI. DESIGNATED REPRESENTATIVES**

A. Each Trustee hereby designates the following person as its representative for receipt of information and notices required or occasioned under this Agreement:

- |                   |  |
|-------------------|--|
| 1. For TCEQ:      | Mr. Richard Seiler   |
| Mailing Address:  | Mail Code 225<br>Texas Commission on Environmental Quality<br>P.O. Box 13087<br>Austin, TX 78711-3087    |
| Physical Address: | Mr. Richard Seiler<br>Mail Code 225<br>Texas Commission on Environmental Quality<br>12100 Park 35 Circle |



Austin, TX 78753

Telephone: (512)239-2523

Facsimile: (512)239-4814

2. For TPWD:

Mr. Don Pitts

Director

Trustee Program

Texas Parks & Wildlife Department

3000 South IH-35, Suite 375

Austin, Texas 78704

Telephone: (512)912-7154

Facsimile: (512)912-7160

3. For GLO:

Mr. Keith Tischler

Natural Resource Trustee Program

Coastal Resources

Texas General Land Office

Stephen F. Austin Bldg., Rm. 620

1700 N Congress Ave.

Austin, Texas 78701

Telephone: (512)463-6287

Facsimile: (512)475-0680

4. For NOAA:

Ms. Jessica White

Coastal Resource Coordinator

NOAA/NOS/ORR/ARD

c/o US EPA, Region VI

1445 Ross Ave., MC 6SF-T

Dallas, TX 75202

Telephone: (214)665-2217

Facsimile: (214)665-6660

5. For USFWS:

Ms. Tammy Ash

NRDA Specialist – Texas Gulf Coast

U.S. Fish and Wildlife Service

c/o TAMU-CC

6300 Ocean Drive

US FWS Unit 5837

Corpus Christi, Texas 78412

Telephone: (361)994-9005

Facsimile: (361)994-8262

B. The Settling Parties hereby designate the following person as their representative for receipt of information and notices required or occasioned under this Agreement:

1. For Texaco: Mr. Mark Stella, Project Manager  
Chevron Environmental Management Company  
Superfund and Property Management Business Unit  
4800 Fournace Place, Room E530C  
Bellaire, Texas 77401-2324  
Telephone: (713) 432-2643

C. Any Party may change the person they have designated as a representative or the contact information for a representative by communicating such changes in writing to the other Parties.

D. All notices, submissions, and payments shall be considered effective upon receipt, unless otherwise provided.

## **VII. DELAY IN PERFORMANCE**

A. If any circumstance occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by Force Majeure, the Settling Parties shall orally notify the LAT within five (5) days of the time that the Settling Parties first knew or should have known that the circumstances might cause a delay. Within five (5) days thereafter, the Settling Parties shall provide in writing to the Trustees a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay; the Settling Parties' rationale for attributing such a delay to a Force Majeure if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Parties, such circumstances may cause or contribute to an endangerment to public health or the environment. The Settling Parties shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude the Settling Parties from asserting any claim of Force Majeure for that circumstance for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Parties shall be deemed to know of any circumstances of which the Settling Parties, any entity controlled by the Settling Parties, or the Settling Parties' contractors knew or should have known.

B. If the Trustees agree that the delay or anticipated delay is attributable to a Force Majeure, the time for performance of the obligations under this Agreement that are affected by the Force Majeure will be extended by the Trustees for such time as necessary to complete the obligations. An extension of the time for performance of the obligations affected by the Force Majeure shall not, of itself, extend the time for performance of any other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, the Trustees will notify the Settling Parties in writing of their decision. If the Trustees agree that the delay is attributable to a Force Majeure, the Trustees will notify the Settling Parties in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure.

C. If the Settling Parties elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution) regarding the Trustees' notice under Paragraph VII.B, they shall do so no later than fifteen (15) days after receipt of the Trustees' notice. In any such proceeding, the Settling Parties shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by Force Majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Parties complied with the requirements of Paragraph VII.A above. If the Settling Parties carry this burden, the delay at issue shall not be deemed to be a violation by the Settling Parties of the affected obligation of this Agreement identified to the Trustees.

## **VIII. DISPUTE RESOLUTION BETWEEN THE TRUSTEES AND THE SETTLING PARTIES**

A. Informal Dispute Resolution. If, in the opinion of either the Trustees or the Settling Parties, there is a dispute that arises under or with respect to this Agreement, that Party shall send written notice to the other Parties to the dispute outlining the nature of the dispute and requesting negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date the notice is sent, unless this time period is modified by written agreement of the Parties.

B. Formal Dispute Resolution.

1. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by the Trustees shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Settling Parties invoke the formal dispute resolution procedures of this section by serving the Trustees with a written statement invoking formal dispute resolution and a statement of position on the matter in dispute, including any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Settling Parties.

2. Within sixty (60) days after receipt of the Settling Parties' statement of position,

the Trustees will send the Settling Parties a statement of position, including any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees. Within fifteen (15) days after receipt of this statement of position, the Settling Parties may submit a reply.

3. The Trustees will issue a final administrative decision resolving the dispute. This decision shall be binding on the Settling Parties, subject only to the right to seek any judicial review available by law.

C. The invocation of informal or formal dispute resolution procedures pursuant to prior paragraphs shall not extend, postpone or affect in any way any obligation of the Settling Parties under this Agreement, unless the Trustees agree otherwise.

## **IX. COVENANTS AND RELEASES**

### **A. Covenant Not to Sue by State Trustees**

1. Subject to the Settling Parties' satisfactory performance of all of their obligations under this Agreement, and except as specifically provided in Section X (Reservation of Rights), the State Trustees hereby covenant not to sue or take any other civil or administrative action against the Settling Parties for any civil cause of action under CERCLA, FWPCA, or any other federal, state or common law associated with natural resource damages that resulted from the release of hazardous substances at or from the Site.

2. This covenant not to sue shall take effect upon the Settling Parties' performance of all obligations under this Agreement and is conditioned upon the satisfactory performance by the Settling Parties of all their obligations under this Agreement. This covenant not to sue extends only to the Settling Parties and does not extend to any other person or entity.

### **B. Release of Liability by Federal Trustees**

1. Subject to the Settling Parties' satisfactory performance of all of their obligations under this Agreement and pursuant to the authority granted by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3711(a), the Federal Trustees hereby release the Settling Parties from any and all civil claims the Federal Trustees may have under CERCLA or FWPCA for natural resource damages that resulted from the release of hazardous substances at or from the Site.

2. This release of liability shall take effect upon the Settling Parties' performance of all their obligations under this Agreement and is conditioned upon the satisfactory performance by the Settling Parties of all their obligations under this Agreement. This release of liability extends only to the Settling Parties and does not extend to any other person or entity.

**C. Covenant Not To Sue by Settling Parties**

1. The Settling Parties hereby covenant not to sue and agree not to assert any of the following claims or causes of action against the State of Texas or the United States for any claims arising from or relating to natural resource damages resulting from the release of hazardous substances at or from the Site, pursuant to any Federal, State, or common law,:

(a) Any direct or indirect claim for reimbursement for natural resource damages from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 107, 111, 112, and 113 of CERCLA, (42 U.S.C. §§ 9607, 9611, 9612 and 9613) or any other provision of State or Federal law; or

(b) Any claims arising out of activities related to the Restoration Project, including claims based on the Trustees' selection of the Restoration Project, except those specifically indicated in Sec. V.B.2 of this Agreement, oversight of the Restoration Project, or approval for such activities.

**X. RESERVATION OF RIGHTS**

A. Notwithstanding any other provision of this Agreement, the Trustees reserve the right to institute civil or administrative proceedings as applicable against the Settling Parties for the recovery of natural resource damages based upon the following:

1. Conditions at the Site (including the release or threat of release of hazardous substances) that were unknown to the Trustees as of the Effective Date of this Agreement are discovered (Unknown Conditions) which indicate that there is injury to, destruction of, or loss of additional natural resources; or

2. New information that is received by the Trustees after the Effective Date of this Agreement (New Information) that indicates that there is injury to, destruction of, or loss of additional natural resources other than those known to the Trustees as of the Effective Date of this Agreement.

B. Information and conditions known to the Trustees with respect to the Site as of the Effective Date of this Agreement shall include only the information and the conditions set forth in this Agreement.

C. Nothing in the Agreement is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action, administrative or judicial for the following:

1. The Settling Parties' failure to satisfy any obligations or requirements of this Agreement;

2. Claims brought on behalf of the State of Texas or the United States for costs, damages, and expenses of any sort, other than for the natural resource damages that are the subject of this Agreement;

3. Liability arising from any future releases of hazardous substances other than the releases at or from the Site that are the subject of this Agreement;

4. Liability arising from any releases of hazardous substances from any site or location that is not the subject of this Agreement, including any hazardous substance taken from the Site and disposed of at another site or location;

5. Liability for violations of State or Federal law that occur during or incident to the implementation of the Restoration Project;

6. Any and all criminal liability; and

7. Any matter not expressly included in Section IX (Covenants and Releases) of this Agreement.

D. The failure of the Trustees to insist upon strict and prompt performance of any provision of this Agreement shall not operate as a waiver of any requirement of this Agreement or of the Trustees' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by the Trustees to enforce such a provision.

E. Nothing in the Agreement is intended to be, nor shall be construed as, a waiver of the State of Texas' or the United States' sovereign immunity relating to suit, liability, and the payment of damages.

## **XI. EFFECT OF SETTLEMENT**

A. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person or entity not a Party to this Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Agreement may have under applicable law. Except as otherwise expressly provided in this Agreement, each of the Parties expressly reserves any and all rights (including any right of contribution against third parties), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to natural resource damages resulting from the releases of hazardous substances at or from the Site against any person or entity not a Party hereto.

## **XII. CERTIFICATIONS**

**Draft**

**4/13/2007**

A. The Settling Parties certify that, to the best of their knowledge and belief, they have fully and accurately disclosed to the Trustees all information requested by the Trustees regarding potential natural resource damages at the Site that is currently in the possession of the Settling Parties' officers, employees, contractors and agents that relates in any way to the releases of hazardous substances at or from the Site.

B. Each undersigned representative of a Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.

### **XIII. TERMINATION**

This Agreement shall terminate upon the Settling Parties' satisfactory performance of all their obligations under this Agreement. The termination of this Agreement shall not affect the following provisions: Section IX (Covenants and Releases); Section X (Reservation of Rights); and Section XI (Effect of Settlement).

### **XIV. SEVERABILITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be, invalid, void, or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.

### **XV. PUBLIC NOTICE AND COMMENT PERIOD**

This Agreement was subject to public review and comment for at least thirty days through publication in the Texas Register, the Federal Register, and at least one newspaper of general circulation serving the area around the Site.

### **XVI. COUNTERPARTS**

This Agreement may be signed in any number of counterparts and, as signed, shall constitute one Agreement, binding on all of the Parties hereto, even though all of the Parties do not sign the same counterpart.

### **XVII. COMPLETE AGREEMENT**

This Agreement and its attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those contained expressly in this Agreement.

**Draft**

**4/13/2007**

**E.I. du Pont de Nemours and Company**  
Authorized Official

(Signature)

(Name)

(Title)

(Date)



**Draft**  
**Texaco Inc.**  
Authorized Official

**4/13/2007**

(Signature)

(Name)

(Title)

(Date)

**Draft**

**4/13/2007**

**Ashland Inc.**  
Authorized Official

(Signature)

(Name)

(Title)

(Date)

**Draft**  
**Kirby**  
Authorized Official

**4/13/2007**

(Signature)

(Name)

(Title)

(Date)

**Draft**

**4/13/2007**

**Texas Commission on Environmental Quality**

Glenn Shankle

Executive Director

Authorized Official

(Signature)

(Date)

**Draft**  
**Texas Parks and Wildlife Department**  
Robert L. Cook  
Executive Director  
Authorized Official

**4/13/2007**

(Signature)

(Date)

**Draft**

**4/13/2007**

**General Land Office**

Larry L. Laine

Deputy Land Commissioner and Chief Clerk

Authorized Official

(Signature)

(Date)

**Draft**

**4/13/2007**

**National Oceanic and Atmospheric Administration**

Captain Kenneth W. Barton

Acting Director, NOAA Office of Response and Restoration

Authorized Official

(Signature)

(Date)

**Draft**

**4/13/2007**

**United States Fish and Wildlife Service**

Associate Solicitor, Division of Parks and Wildlife, Office of the Solicitor  
Authorized Official

(Signature)

(Name)

(Date)



**Draft**

**4/13/2007**

**EXHIBIT A**

Damage Assessment and Restoration Plan

**Draft**

**4/13/2007**

**EXHIBIT B**

Implementation and Monitoring Plan